

From: [Asher, Chance \(ECY\)](#)
To: Szelag.Matthew@epamail.epa.gov
Subject: RE: SMS revisions
Date: Wednesday, August 22, 2012 7:53:00 AM

Hello Matt,

You asked about what is essentially different from the 2011 version of the SMS rule sent to you earlier this year. The major changes we have made include:

- 1) Some new definitions (such as cleanup level, natural background, point of compliance) to better harmonize with MTCA terminology.
- 2) Regional background has been further clarified.
- 3) The biologically active zone definition has been clarified to provide flexibility for site specific determination for freshwater systems.
- 4) The ability to settle with a covenant not to sue/contribution protection if the sediment cleanup standard is met rather than the sediment cleanup objective.
- 5) A sediment recovery zone is not required unless the cleanup standard is not met after 10 years.
- 6) The cleanup standard is determined by technical possibility and adverse environmental impact. The option of cost was removed and clarified during remedy selection.
- 7) Section 173-204-570 (Remedy Selection) was modified to better harmonize with MTCA.
- 8) Section 173-204-571 (Human health):
 - a. A default fish consumption rate is NOT included in. But the Reasonable Maximum Exposure (RME) scenario was further clarified to be based on a tribal or subsistence fisher use.
 - b. More detail was added to clarify how the RME will be developed.
- 9) Part V of the rule (Sediment Cleanup Standards) will be promulgated under the MTCA law only. As you know based on our discussions, previously the SMS rule was promulgated under both MTCA and the Water Pollution Control Act, and therefore considered water quality standards. We have proposed this changed with the intent that the revisions will apply to cleanup under MTCA.
- 10) A fair amount of rewording has been done for simplification, clarification, and legal necessity.

There are other changes, but for now, this is what comes to mind immediately. Please e-mail or give me a call if you have questions. However, as of Friday August 24, I will be on vacation through September 10. We can discuss more after I return as well.

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From: Matthew Szelag [mailto:Szelag.Matthew@epamail.epa.gov]

Sent: Thursday, August 16, 2012 4:29 PM
To: Asher, Chance (ECY)
Subject: SMS revisions

Hi Chance,

I'm going to start looking through the SMS revisions that have just gone out for public comment. When comparing this version and the version I reviewed back in February, I wanted to ask if you made any other major changes besides removing the FCR placeholder? It would help me out a lot to know where other changes may have been made if there are any.

Thanks in advance.

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